today, the 21st March, 2002, allotted time for Government Legislative Business as follows:

1. Consideration and return of the Jute Manufacturers Cess (Amendment) Bill, 2002, as passed by the Lok Sabha. Half-an-hour
2. Consideration and passing of the following Bills:
   (a) The Coast Guard (Amendment) Bill, 2001. 2 hours
   (b) The Prevention of Money Laundering Bill, 1999, as reported by Select Committee. 4 hours
   (c) The Delhi University (Amendment) Bill, 2002. 1 hour

STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE PREVENTION OF TERRORISM (SECOND) ORDINANCE, 2001

AND

THE PREVENTION OF TERRORISM BILL,2002 - *(Contd.)*

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): Sir, I am very grateful to you for accommodating me. At the very outset, I would like to put the record straight that in this House it is nobody's case that the State is not entitled to arm itself against terrorism. Let us be very clear on this. The State is entitled to, according to prevailing circumstances, to have a law against terrorism. This is, at least, I would like to say, nobody's intention. But, certainly, Sir, we are interested in that, that the laws that are brought should be in accordance with the Constitution of India, and our ethos of constitutional laws and precedent in this country. I am very happy that Ram has switched sides. But I read his submissions in the Kartar Singh's case, when I was Minister of Law. He had created great difficulties and said that that was an ordinary law; not relating to defence of India. And he, perhaps, applied the theory of pith and substance in that case. I am happy that you have realised your mistake, and, as usual, you have changed sides. You are a senior member of the Bar and I have high regards for you. But, sometimes, you take very, very contradictory stands. That is why, we are not happy with your position on several occasions. In the *hawala* case, you went in for a public interest litigation, and then switched over to defend Mr. Advani. This is totally inconsistent with the position of a senior counsel. ...*(Interruptions)*... But since no law applies to you, not even the Law of Estoppel. I would not comment further on it. Sir, I was amazed how Mr.

Kapil and Mr. Ram Jethmalani had been together in opposing this Ordinance. But strange phenomena do happen in life, and let us not waste our time on that. Sir, I agree that in the Kartar Singh's case, Justice Pandian's judgement had suggested several elaborations that this could be done like this, and that could be done like this. But those of us who have practised criminal law, particularly, the Vice-Chairman, Ram, and some others, know this. I can submit on the floor of the House, and the Law Minister will vouch for me, even in the TADA, I recorded that the departure from the common law of India will not be good, in the interest of the society because our police is not like the American police or the English police. You will agree with it. We have a report of the Law Commission. In 1994, see what they have recorded. I would briefly tell you, because it is appropriate. They said, "Not only the exclusion rule of the evidence recorded by the police should apply to the police, but also to the other officers like, the Income-tax and the Customs officers" because people jumped from the sixth floor of the Lok Nayak Bhawan, and killed themselves, during interrogation. So many women are raped in the police station. So many children are harassed. Minorities are picked up. These custodial crimes itself are a big phenomena in our society. Therefore, there should be a bit of caution, and bit of control, while arming the police of this country because after Independence, no training has been given to our police to make them aware that we are a constitutional society; it is no more a British Government that will beat up the people of this country. I am not against the police. The Police has its own difficulties. It has been ill-treated for decades. No improvement has been brought about in the method of their investigation. Suddenly, when the Government fails, it says, "Okay, use the police. They will control the things for us." Therefore, what I say is this; read the Commission's report which is lying in the archives of the Home Ministry and the Law Ministry. What have they recommended? At least, confessional business, that is, recording confession should totally be taken away from the officers of the Government. It should reside in the magistrates. And, I would submit, although you are well aware, Mr. Ram and Mr. Law Minister, that there are two prerequisites in regard to confession, before the court accepts it as a valid evidence. Firstly, it should be voluntary. Secondly, it should be true. You cannot say that you have faith in this police officer or in that police officer. This law has been there since the inception of Privy Council, till today. Nobody has changed it. The confession has to be voluntary. This is the first test that a confession has to undergo. If this test is not fulfilled, the other tests need not be applied.

It has to be rejected straightaway. Now, coming to the provisions of the POTO, I will show that how, step by step, the police have been given powers right from day one. Earlier also, under clause 57 of the Code of Criminal Procedure, there were provisions that the moment you are arrested, you will be produced before a magistrate straightaway, within 24 hours. Why? Because, under the Common Law, even the Britishers had a regard for life and liberty of the citizens. They said that the judiciary must intervene in between, and the magistrate used to apply the principle of *habeas corpus* to see whether the detension was justified, but, now, the POTO will enable the police to keep a person for one month in its custody. To Shri Ram Jethmalani or the others who support this Bill, I am very sorry to say that that would be an end of the Criminal justice system. What remains of a person, after having remained in police custody for one month? If, unfortunately, you have to go to police today, -- you may have gone, but I have not gone -- you know what remains of a person, after having been in custody for one month; after having been tortured or humiliated then and there, saying that the statement will be voluntary. Is there any possibility of a person staying in police custody, where people are hanged upside down? Do you know what sorts of tortures are inflicted? I will give the 152nd Report of the Law Commission to the Minister of Law to read them. How do the Ministers forget these kind of reports? And, you say that you care for the word of law! It has been recorded by a former Chief Justice of India. He said 'these confessions should be struck down from the statute book; made not only to the police, but to other officers also.' I am not saying that you should do that but, at least, you should stick to the earlier provisions of the Common Law, where a person is free when he makes a confession. How do you ensure freedom of a person or voluntariness of a confession? You should give him reasonable time to think over. That is what we understood of criminal law when we were practising. That, after the police custody, he is sent to judicial custody. After staying in judicial custody, he is brought back to the magistrate, telling him that, hereafter, you will not be sent to police custody. Therefore, you think over whether you want to make the statement or not. These were the salutary safeguards. Some of your speakers were saying that nothing has been discussed on the law. Are we discussing law here? Everybody knows this much of law that a statement made before a police officer shall be inadmissible, shall not be used even for corroboration. It will be used only for contradicting the witness, under 162 Cr. PC and section 145 of the Evidence Act. Everybody knows this much of law. We need not educate you, to this extent. When I find a

5.00 p.m.

senior counsel misleading this House, I think, it is a very good dose of medicine for him. He should take it happily. Therefore, I am of the view that the Government should have a law which could deal with these things effectively. But the Government is also the "Parent Patria" of the citizens of the country. You cannot treat the citizens of this country as guinea pigs. Our founding-fathers did not leave life and liberty to the Code of Criminal Procedure. Shri Fali has argued on articles 19, 20 and 21, time and again. The dimension that was given to article 21 is valid till today. You have simply forgotten the articles relating to life and property; article 22 relating to testimonial compulsion. I deeply appreciate the Government's anxiety to tackle terrorism. The other day, I had asked the hon. Home Minister to enact a law strong enough to deal with terrorism. I still remember what he said. He said, "I will be guided by the Human Rights Commission". Shrimati Shabanaji got annoyed with me and asked me as to why I was attacking the Human Rights Commission.

I was a Minister when the Punjab was burning. We brought this TADA. Now, about 2000 police officers are being prosecuted in Punjab for the crimes that took place at that time. Why has it happened? Perhaps, the power might have been misused, and the people of Punjab complained about it. One of the officers had to commit suicide. He was a very brave officer who fought against terrorism, but, after the change of the Government, he put his head on the railway track and killed himself. He killed himself because it was pointed out that he used excessive powers. He could not really tolerate that. Therefore, take those powers which will help you. Why are you increasing the days of police custody remand? There is already a provision for fifteen days' police custody, and, after fifteen days, you could send him to judicial custody; there is no need for increasing the period of police custody. The provision of one month is deliberate. With this provision, you can squeeze the blood of those people who are caught under this Bill; and they are forced to confess to a crime which they have not committed. Therefore, this is not an allegation against the Government. There are possibilities of misuse of the law and bare possibilities of the truth of law. Those of us who have practised law know how the tables are turned overnight by the police. I am not attributing motives to anybody. Now, along with this, Mr. Law Minister and Mr. Home Minister, what have you done? You have made a provision that nobody can come out on bail till one year. Sir, bail is nothing, but it is a concession granted only when

you cannot provide an accused a speedy trial and you have to release him on bail, so that when you require him, he can appear again and face his trial. Sir, I think, detention before trial for a longer period is the gravest crime, because the family of the victim is broken during this period. A man who lives in jail for one year, without trial and without bail, his family gets disconnected from him; his children can face starvation. What will happen? Unfortunately, if somebody is picked up under the POTO, then what will he argue, if there is no provision of bail? I personally feel that these provisions are not the choice of the Ministers. All these police officers are hungry for such powers. The Vohra Committee tells us about what has happened in this country, by giving more powers to these police officers. There is a nexus between the police and the criminals. Everybody knows it. I need not tell you about this. Your own Home Ministry, your own archives, would tell you that your police has become totally unreliable in metropolitan cities; your jails have become centres of *mafias*, and you have done nothing. You want to implement the POTO straightway to solve the problems of this country. Do it. You will suffer; credit and discredit will go this Government, but not to us. But it is our duty, as it was your duty on the other side ...(*Time Bell*)... Sir, I will take two-three minutes more, as I have to put forward some important points, for the consideration of the Government. I will not waste the time of the House. It is not a political speech. Somebody cited Kartar Singh case. Mr. Law Minister, you would remember two sentences in the Kartar Singh case. And, I quote, "It is one of the essential principles of criminal jurisprudence that a crime is not committed, if the mind of the person doing the act, in question, is innocent. Therefore, to constitute a crime, the intent and act must follow." Have you combined intentions in your definitions? Your definitions are faulty. Nothing has been said with regard to 'whoever is with intent or whoever is having the knowledge'. Therefore, what do you say? Who is a 'member'? I cannot understand what do you mean by a 'member'. Whoever knowing that so and so is a terrorist, and even if he associates himself with him, then only he will be guilty. Therefore, what I say is that this has been drafted in a hurry, and this could be improved, in other aspects.

My friend, Shri Ram Jethmalani, had referred to the testimonial compulsion and others aspects. He was referring to the English law. In the English law, nowhere, it has been said that the burden is on the accused. Even in Article 76, it is said that the burden will be on the prosecution. How have you forgotten the famous Woolmington's case? Throughout the web of the English law, there is a golden thread, i.e., the presumption of

innocence. Can any counsel argue a criminal matter, without the doctrine of the presumption of innocence? This is an adversary system of justice where both parties have to be put evenly on the playfield. If you put the accused in a disadvantageous position and the mighty Empire of the Home Ministry and the Government in an advantageous position, can he face that? An individual is very weak, as against a Government. Therefore, this presumption of innocence is the starting point of a criminal trial, when the plea of 'not guilty' is recorded. Therefore, the burden of prosecution is one of the basic features of criminal jurisprudence. Then, there is the benefit of doubt. These are three cardinal principles which have been totally neglected.

All these have been lost because we know that there is the problem of terrorism in this country and we should straightway accept it. I also remind you that you have given a clause of raising of adverse presumption. You know that there are statutory presumptions. They are definitely derogation of presumption of innocence. But, statutory presumptions are there in the Prevention of Corruption Act, in the Narcotics Act, etc. What is a statutory presumption? It is not proof of guilt. It is proof of certain ingredients of the offence. For example, money is received under the Prevention of Corruption Act. The onus is shifted to show that it is not innocent money, it is tainted money, and a presumption will be raised that it is as a motive or as a reward. Similarly, under the Anti-Terrorism Act, if some presumption is to be raised, it should be provided in the statute that if this happens, if this evidence is produced, this presumption will be raised. But, here, there is a total void on presumption. Nobody knows which section speaks about presumption. Kindly see what are the words in this statute. "The court shall draw adverse inference against the accused". What adverse inference? What are the terms by which the court will be guided to raise the inference? Nothing has been said about it. You are now saying that you can take intimate samples and other samples of the body of an accused. How have you forgotten the Prohibition against testimonial compulsion in India? This is a constitutional provision interpreted by courts in several judgments. How have you forgotten the fact that this criminal law cannot take away the provision of the Constitution?

You have pleased the Press by saying that sub clause 8 has been dropped. But read clause 14. Even now, the Press will be required to give information. Otherwise, it is punishable. Clause 14 is still there. You delete one clause and say, "Now, nobody can take information". Now, there is

clause 14. It again says, "You should supply information; otherwise, you shall be prosecuted.

All these are areas which need a fresh consideration. I am not making any political speech, because politics does not take you anywhere in these matters.

SHRI V. V. RAGHAVAN (Kerala) : Sir, all the political parties should be given time to express their views.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I agree with you. But, if I do not give time, immediately, there is a reaction.

SHRI HANSRAJ BHARDWAJ: Sir, one more point. Another thing which this House must consider is, now, we are shifting to a state of affairs where the courts will no longer be required to determine anything. They will be simply determined by the Home Ministry, and the designated authorities will deal with --property, citizens' rights, organisation, everything; everything will be at the mercy of the Home Ministry because the designated authorities will belong to them. This is a serious departure. In our country, the power of adjudication is vested in the court and nobody else. It has been declared that the power of judicial review is a basic feature of the Constitution. And, I am very sorry, Sir, that notwithstanding my desire that this country should have a law which should firmly deal with terrorism and help the Government, they are not serious about it. They are doing a casual work. This law will have serious difficulties in the court. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): May I again remind hon. friends that there are 21 more speakers? The Congress had 58 minutes, they have consumed 78 minutes. When I said it in the beginning, Mr. Arjun Singh got up and said, "We will extend the time". We have extended the time from 6 p.m. to 7 p.m. But if you do not manage your time discipline, you have to decide what to do. Mr. Saifullah.

SHRI K.M. SAIFULLAH (Andhra Pradesh): Sir, During the discussion on the Anti-Terrorism Bill, a senior Member, Mr. Kapil Sibal, stated, "We are repenting the past." I am very happy. What they have done during the Emergency and the TADA, they are repenting. Repentance is always good. He said that POTO will be used against the minority community. So, they are threatening the minority community in India. The hon. Member, Shri Ram Jethmalani, a Senior Advocate, has said that the Congress Government had misused TADA against the minority community. So, everybody is

threatening the Indian Muslims, minorities in India. It appears as if they are playing a football match with this community. But, perhaps, they have forgotten one thing, that without a football, there will be no goal. Of course, we are not afraid of this type of apprehension. In this connection, I would like to say that before the introduction of this Bill in the Parliament, there has been a lot of adverse publicity in the newspapers saying that this Bill has been introduced to curb terrorism with iron hand. That is what the Government is saying.

The second apprehension which has been expressed is that this may be used against the political opponents and the minority communities. This type of propaganda is being spread throughout the country. On the face of it, it appears good. These are the two apprehensions which have been expressed. Further, the hon. Member, Shri Kapil Sibal, has termed this legislation as obnoxious. The hon. Member, Shri Ram Jethmalani, has said that TADA was an obnoxious legislation. Here, I would like to refer to article 352 of the Constitution of India, which deals with the proclamation of emergency. It says: "If the President is satisfied that a grave emergency exists wherey the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebillion, he may, by Proclamation, make a declaration to that effect in respect of the whole of India or of such part of the territory thereof as may be specified in the proclamation." Article 352 had been invoked by the then Government. But, we have not used it. We have introduced the POTO. According to this Bill, the right of *habeas corpus* which a citizen of India enjoys under article 226 and under article 32 of the Constitution of India, shall be taken away. The hon. Member, Shri Kapil Sibal, has stated like this. Whatever it may be, if the Bill is also passed by the Rajya Sabha, this will become an Act. I would like to refer to sub-clause 4 of clause 1 of this Bill at page 1. It says: " Any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India." If "A" goes to some foreign country and commits a terrorist act over there and comes back, as per this Bill, he is to be tried in India, though the offence has been committed in some foreign country. I would like to know from the hon. Home Minister one thing. If a case has been registered against the person who has committed an act of terrorism in a foreign country in that country itself, irrespective of whether he is convicted or acquitted of the charge in that country, can he be tried again in India for the same offence? Is there any such provision in this Bill that he can be tried again in India? As a

matter of fact, a person who has already been acquitted in a case, cannot be tried again. That is not there. I would like to have that clarification.

So far as the question of confiscation of the property is concerned, no reference has been made to this effect in this Bill. I would like to know whether a benami property can also be confiscated or not. At page 3, in clause 3(1); it has been stated: " .... Likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies..."They have referred to an injury, but they have not referred to this fact whether the injury is simple or grievous." This has to be incorporated in this Bill.

I have read all the provisions twice, for two days. All are ingredients of this Bill are in existence in the Indian Penal Code, Cr.P.C., Criminal Rules of Practice, Evidence Act, Explosive Substances Act, etc. All this will apply to the provisions of the POTO. What made them to put the POTO into operation is that the Evidence Act is a little bit liberal towards the accused. Therefore, they want to strengthen the law to deal with the problem, with an iron hand. That is why the POTO is being brought into existence. Of course, it is true with regard to terrorism. The main point is that the POTO gives protection to them with regard to confession. Section 25 of the Indian Evidence Act says that a confession made before a police officer is not a confession. Section 27 of the Evidence Act says that a confession that leads to the recovery is admissible. To get over section 25 of the Evidence Act, they say that the confession before a Superintendent of Police is admissible. That is what the Government says. My friends on the other side, the Congress people, who were in power earlier, say that such a confession is absolutely bad. I also admit that it is very bad. I want an explanation from them. When they were in power, the RPF Act came into existence. What is the Railway Protection Force Act? The Railway Protection Force Act says that a confession before a Railway Protection Officer is admissible. They made that law. Everybody is hand in glove with the other in making this type of laws. So, they cannot argue about the confession. Whatever it be, I submit to the Government, with folded hands, that this law, making the confession before a police office admissible, is not good. If you want to curb terrorism, we will support you, provided you make a proviso, 'a confession before a police officer, not below the rank of a Superintendent'. In addition to that, a little more corroboration is necessary. Otherwise, it will become a jungle law, and, because of his admission, he will be simply sent to jail. It does not look nice. That is my

personal view. There should be a little corroboration. Suppose you seize some weapon from him. It is a corroboration of his admission. Then, you can send him to jail. So, there should be some such provision. Just think over it. We have instructions from our party and from Shri Chandrababu Naidu. He has given you an assurance that our party would support it. I will support it, by pointing out all these things.

Sir, another point is that, they have made some provision in this Bill with regard to adverse inference. Section 114 of the Evidence Act speaks about adverse inference. Since you are a senior man, you know everything. As regard adverse inference, what the Bill says is very bad. Kindly apply your mind to it. Terrorism must be curbed. As per the Bill, if any person harbours any criminal, that is a terrorist. If any criminal's vehicle is found in the possession of an innocent person, it is sufficient to send him to the jail. An adverse inference is drawn that he is hand in glove with the terrorists. That is sufficient. That is very bad. Suppose a man commits a crime and puts the vehicle into his enemy's compound, the burden shifts to the innocent person in whose compound the vehicle is found. So, there must be a little corroboration of the facts to send him to jail. You just think over it. Finally,..

AN HON. MEMBER: You are supporting this Bill!

SHRI K.M. SAIFULLAH: What can we do? Everybody has to do that. I am also doing that. You are also doing that. There is no other go.

Clause 3 says that if a husband is found as a terrorist, his wife should not be arrested. I would request the hon. Minister to substitute the word 'wife' by wives. Sometimes, Muslims have four wives. Kindly add the word 'wives' in this clause.

Clause 27 (2) says, "If any accused person refuses to give samples the court shall draw adverse inference against the accused." If a police officer requests the judicial officer to give samples of handwriting, finger-prints, etc. of the accused, if the accused person refuses, an adverse inference is drawn. An adverse inference need not be drawn on the report of the police officer. That refusal must be recorded before the judicial officer. If possible, kindly have such a provision in this Bill.

Now I come to clause 49 (2) which is regarding Section 167 of the Criminal Procedure Code. As you know, Sir, Section 167 deals with remand of the accused.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Why are you exposing my ignorance?

SHRI K.M. SAIFULLAH: Sir, you know everything. According to the Criminal Procedure Code, if an accused is produced before the Magistrate, he could be remanded to a judicial custody for a period of 15 days. My suggestion is that the period of 15 days should be increased to 180 days because a terrorist cannot be brought out so frequently. He might run away. If any terrorist is supported by anybody or given shelter by a relative, the whereabouts of that person can be noted down by the Magistrate.

Mr. Vice-Chairman, Sir, you would also appreciate the point which I am raising. I come to clause 49(7). I thought, Shri Ram Jethmalani would raise this point. But he did not do it. I do not know why. Section 438 talks of an anticipatory bail and Section 437 talks of the real bail. Here it is said that without the notice to the public prosecutor, he cannot be released. Everybody knows that in non-bailable cases, notice has to be given. But here they have added that if a public prosecutor opposes, he should not be released on bail. Is it not a mandatory provision given to the police by taking away the right of the judicial officer? The Law Minister is trying to interpret it in a different way. In the last proviso it is mentioned, "If the court comes to the conclusion that he is not guilty." If he is not guilty, he knows, he would be released. If a chargesheet is filed and the investigation is over, then the bail is necessary. Just think over it.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): I think this provision has been bodily lifted from the NDPS Act. ...*(Interruptions)*...

SHRI K. M. SAIFULLAH: The Essential Commodities Act does not mean that a man would not be released.

Now I come to clauses 15 and 19. It says, "No court can take cognisance of the case, even on a private complaint or anything else, without the permission and approval of the State and the Central Government." So, it does not amount to taking away the power of a judicial officer. Supposing a private person files a case, the police need not take a FIR, but he can endorse it under Section 156 (3) of the Cr. P.C. But that power of a judicial officer is completely taken away here. Kindly look into this aspect as well.

Then, supposing, a terrorist gives financial assistance to, say, 'A', then that person also can be booked under POTO. But what, if a political party takes money? Nothing is mentioned about it. There are many political parties who take money. You must have a provision for that also..*(Interruptions)*...

AN HON. MEMBER: Then, you oppose it.

SHRI K. M. SAIFULLAH: Simply opposing the Bill is different. But you must get the things done by adding suitable provisions.

Then, as regards Section 197 of the Cr. P.C., no prosecution can be launched against a police officer if he has committed an offence, while discharging his official duty. Now, here, the Bill says that no case can be filed against any police officer even if he kills a person while discharging his duty. So, if a police officer does any act in good faith, no Court can take cognisance of this offence. So, there is a blanket power with the police. I would request the hon. Minister to look into this aspect as well.

But, looking at the situation prevailing in the country, considering the attack on our Parliament, considering the attack on Jammu and Kashmir Assembly, considering the various acts being perpetrated by the ISI..*(Interruptions)*...

SHRI K. RAHMAN KHAN (Karnataka) : Even Orissa.

SHRI K. M. SAIFULLAH: Sir, what Shri Rahman Khan is trying to tell me is that the same thing should be applicable to Orissa as well. There cannot be a step-motherly love shown to one person and real love to another person. There must be equality before the law. I appreciate it. You must apply this law to everybody found guilty.

Sir, then, we are aware that the Government has banned the Madarsas supposed to be teaching fundamentalist ideas. But what about the other organisations which are passing resolutions saying, "All the Muslims should leave India" or they should come under their feet? Should such organisations also not be condemned?

Finally, Sir, I would refer to what the hon. Member, Dr. Apte, has said. As per Section 30 of the Indian Evidence Act, the statement of the co-accused is admissible if it is inculpatory; if it is exculpatory, it cannot be believed.

Sir, under the prevailing circumstances, this Bill is necessary to curb the terrorist acts in our country. Our Chief Minister, Shri Chandrababu

Naidu, has been handling this very well. There is no question of taking power in his hands. He is doing things in a democratic way. I request this Government, with folded hands; please do not misuse this law, but make some alterations in the proviso, so as to safeguard the country and curb the terrorist acts. With these words, Sir, I support the Bill.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Mr. Subbian. Sir, you have eight minutes, and please allow me to stick to the schedule. Otherwise, we would not have voting till 10 o'clock tonight.

SHRI KA. RA. SUBBIAN (Tamil Nadu): Sir, I thank you for having given me this opportunity to offer my remarks on this Bill.

In all spheres of human activity, the basic requirements are justice, equality, fairness and impartiality. Fundamental right is the right of every human being. The Fundamental Rights are guaranteed in the Constitution. The substantial law and the procedural law have to be complied with, before initiating any proceedings of penal nature. But, in India, ever since 1955, several enactments, which infringe and violate the Fundamental Rights of the citizens of India, on the ground of suppressing terrorism, have been enacted. I need not spell out all the Acts. But, some of these are the National Security Act, 1980, the Armed Forces Special Powers Act, 1958, the Disturbed Areas Act, the Unlawful Activities (Prevention) Act, 1967, and so on. There are several such Acts.

Lastly, we had seen the TADA and the MISA. TADA and MISA were laws that affected more the rights of human beings. Under MISA, we were the worst sufferers. Our hon. Minister of Commerce and Industry, Shri Murasoli Maran, was detained. The hon. Member, Shri P. N. Siva, who is sitting here, was taken into custody and was detained while he was just 21 years old. Without assigning any reason, more than 500 people were kept under detention. Under TADA also, more than 75,000 people were arrested throughout the country and put behind the bars. Hardly about one per cent of the arrestees were convicted. Now, we have this POTO. What is the necessity for bringing POTO? This has to be seen. We have, before us, an enactment to deal with the menace of terrorism. We do not have any law against terrorism and terrorists. This is an important piece of legislation because it concerns the dignity and integrity of this country.

What has happened during the last 15 years? The menace of terrorism has taken the valuable lives of almost 61,000 civilians, the lives of 8000 untiring Army personnel and policemen. Almost 6,00,000 people have

been rendered homeless because of terrorism in various parts of our country. About Rs. 45,000 crores have been spent for tackling insurgency. There is no stringent law in our country to tackle terrorism. Terror is meant to inflict fear in the minds of others. We see the lightning speed with which terrorists, persons involved in disruptive activities, as also those wanting to create problems in the country, have been operating. That is why a sharp, precise and quick enforcement of the law is required. There is an upsurge in terrorist activities, intensification of cross-border terrorist activities, and insurgency, in different parts of the country. Terrorism, in general, has acquired global dimension and has become a challenge for the entire world. In their reach and the methods adopted by them, the terrorist groups and organisations take advantage of modern means of communication technology, using high-tech facilities available, in the form of communication system, transport, sophisticated arms and various other means. The existing criminal justice system is not designed to deal with the type of heinous crimes which the proposed law deals with. That is why the Hon. Home Minister has brought POTO. The Central Government as well as the State Governments can implement this law.

Sir, now, I would like to draw the attention of the Home Minister to clause 4(b). Sir, clause 4(b) of the Bill states, "Where any person is in unauthorised possession of any - bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not,..." he can be punished. Sir, my submission is, this provision of the law will be used by the police to implicate innocent persons. It will be used by the police very easily. The police will plant a country-made bomb or some gelatine stick or a weapon and arrest a citizen. A stage-made drama will be enacted, as if it was recovered from the person. If he is arrested, he will not be entitled for bail for one year. If the offence is proved, by producing false writings, he will be sentenced to three years' imprisonment or life imprisonment. This is a very draconian law. Some amendments are necessary, as far as the definition in clause 4(b) is concerned. Even a *ganja* can be planted and a false case can be foisted against any person.

Sir, many senior Members of this august House have said in detail about confession recorded by a police officer. As per clause 32(1) of the Bill, the confession made before a police officer, not lower in rank than a Superintendent of Police, shall be admissible in trial. Sir, my submission is, under section 25 of the Evidence Act, the confession cannot be recorded by

a police officer. As submitted by my friend just now, under section 27 of the Evidence Act, confession made before a police officer is admissible, subject to recovery of any facts or material. So, as per sections 25 and 27 of the Evidence Act, confessions made before a Superintendent of Police are not admissible as evidence. Whereas, if the confession is recorded by the Superintendent of Police, under this Bill, it is admissible as evidence. It is a great anomaly. How can it be accepted? How can it be acted upon?

Sir, when the TADA case was challenged in the Supreme Court, a three-judge bench held that confession made before a police officer, under TADA, is admissible. Justice K. Ramasamy and Justice Sahai observed that it was not admissible as evidence. They observed that there is a difference between the confession made before a judicial officer and the confession recorded by a police officer. It is due to their very character. They have observed that there is a basic difference between the approach of a police officer and a judicial officer. A judicial officer is trained and tuned to reach the truth, by a fair procedure. A police officer is trained to achieve the result, irrespective of the means that are employed. So long as the goal is achieved, the means are irrelevant, as far as a police officer is concerned. Whether he is a constable or a Superintendent of Police, the problem does not lie in the personnel, but in the culture. Unless the police culture is changed, it will always be difficult to rely on the confession recorded by the police.

Sir, the accused has to be produced, within 48 hours, before the magistrate, and the magistrate can record the statement of the accused. As a practising lawyer, not only as a public prosecutor, but also as a defence lawyer, I can say that none of the accused will complain against the police when he is produced from the custody of the police. What I want is that the accused should be kept in judicial custody, and 24 hours time should be given to them to admit or not to admit the genuineness of the statement recorded by the police. However, the confession recorded by the police officer should not be final. It should be recorded in the presence of two independent and reliable witnesses. Sir, as far as the criminal procedure is concerned, we have got provisions--sections 436, 437, 438 and 439. 436 is bailable, 437 and 439 are non-bailable and 438 relates to anticipatory bail. As far as this Bill is concerned, enormous powers have been given to the Public Prosecutors. What does it say? "If the Public Prosecutor opposes the bail application, then the accused can't be granted bail." There should be some amendment to clause 49 of this Bill. Unfettered powers should not be

given to the Public Prosecutors, because we know how the Public Prosecutors, nowadays, are acting. Without any reason, they may oppose the application. We have the genesis of this kind of law in England, during the War years.

Here, there is a provision, clause 37, for appointing Competent Authority. As far as the States are concerned, the Secretary should be made the Competent Authority; as far as the Centre is concerned, the Joint Secretary should be made the competent authority, to whom powers be given. As I said, we have the genesis of this kind of law in England during the war years. When England was facing an attack or an aggression by foreign forces, a near civil war situation arose in the country, with the connivance of some foreign elements. Prevention of Detention Act was conceived in 1944, during the Second World War. About 200 people were put behind the bar. It was the Secretary of Home who had ordered the arrests.

Now, in our country under the proposed law, under clause 37, Secretaries to the Government of various States are given orders to file the cases. I suggest that this power should be vested only with the Union Home Ministry, to avoid misuse and its abuse. When we continue to follow the British system, from the days of McCaulay, there is nothing wrong in following this provision.

My appeal is, the Prevention of Terrorism law must be subject to review by Parliament every year, on the basis of a report submitted by the Review Committee to the Parliament, as far as every detainee is concerned. This law should be withdrawn, if the object is not complied with. There should be a wider discretion to the judge to grant bail. There should be a strict time frame for trial, as far as the disposal of the cases are concerned. Just as in sessions cases, the trial of the case should be made day-to-day.

The Centre should be vigilant and the States should be kept under strict observation so that no State misuses or abuses the provisions of the law against the leaders of any political party, to wreck vengeance against them. The States should be kept under observation, for any misuse or abuse. With these words, I conclude. Thank you.

THE MINISTER OF RURAL DEVELOPMENT SHRI M. VENKAIAH NAIDU: Mr. Vice-Chairman, Sir, all the time, lawyers argue on both the sides. Sir, I have also studied law, but fortunately, I have not practised. I became a social worker and came into public life.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): It is our fortune; otherwise, we would have been in difficulty had you practised.

SHRI M. VENKAIAH NAIDU: Sir, the capability of the advocates is that they can argue effectively, on the same case, on both the sides. That is the problem. Sir, while discussing the present legislation, we have to keep in mind that we are dealing with an extraordinary situation. I don't think anybody can disagree with the fact that there is an extraordinary situation prevailing in the country. I need not go into the history. Sir, we have to concede that this is a harsh law, which will be out of place, in a normal situation. But hon. Members would agree that terrorism can't be tackled with velvet gloves.

The law has to be there as long as terrorism shows its ugly face. "Please do not advise us to use velvet gloves." This is not Venkaiah Naidu, Rural Development Minister, but this is a former Union Home Minister, Shri S.B. Chavan, who made this statement while participating in a discussion in the House with regard to the amendment to the Criminal Procedure Code. Sir, the situation then and the situation now - what is the difference? I only request all the Congress Members, please read this, please remember this and then subsequently after doing introspection you can take whatever position, whatever line you want to take. After all, you have the liberty. But do not oppose this for the sake of opposition. People are saying that the TADA was misused, it was misused against the minorities. Even Ram Jethmalaniji, a very sensible, senior and enlightened person was also talking about its misuse against the minorities. Some of the Congress friends have also mentioned it. Sir, there was a secular Government at that time. There was a secular Government in the States and at the Centre. There was no BJP Government. Are you admitting that the Congress Government earlier ...*(Interruptions)*...

DR. BIPLAB DASGUPTA (West Bengal) : It means you are admitting that the BJP is not secular. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: I am not admitting. ...*(Interruptions)*... Try to understand. Finally people will decide who is secular and who is peculiar. I need not say and you need not give me a certificate. My stand is clear right from day one, of this Government, of my Party -- appeasement of none, justice for all. This has been my line. It will continue to be our line in future also. There is no hesitation in accepting it. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Please do not interrupt. ...*(Interruptions)*... We have not much time left. ...*(Interruptions)*... There is hardly any time left. ...*(Interruptions)*...

श्री एम. वैंकैया नायडु : आज पूरा देश ही नहीं, पूरा विश्व भारत की ओर देख रहा है और भारत का जो यह ऐल्डर्स हाऊस है, राज्य सभा, इसकी ओर सब देख रहे हैं। हम क्या करने वाले हैं, ऐसी गंभीर स्थिति में पार्लियामेंट क्या करने वाली है, राज्य सभा में आज क्या होने वाला है, सारी दुनिया इसकी ओर देख रही है और सारा देश देख रहा है। हमें डिसाइड करना है कि हमें क्या करना है। मेरी इतनी ही विनती है कि यह कोई पोलिटिकल ईश्यू नहीं है। इसमें किसी की हार नहीं है और न किसी की जीत है। इस रूप में इसको नहीं लेना चाहिए। देश के हित में सोचने वाले सभी लोग चाहे सत्ताधारी पक्ष के हों या विपक्ष के हों, सबको एक साथ मिलकर इसके बारे में चर्चा करनी चाहिए और फैसला करना चाहिए। मान लीजिए, यह विधेयक पारित हो जाएगा तो कौन खुश होगा? देशवासी खुश होंगे। मान लीजिए, यह विधेयक पारित नहीं होगा, यह हार जाएगा तो यह हार देशवासियों की नहीं, सरकार की नहीं, विपक्ष की नहीं होगी लेकिन इससे वे लोग खुश हो जाएंगे जो आई.एस.आई. के एजेंट हैं, वे लोग खुश हो जाएंगे जो ओसामा बिन लादेन के फॉलोअर्स हैं, वे बाहर मिठाई बांटेंगे और अपने देश में दीपावली मनाएंगे। इसके बारे में हमें सोचना चाहिए। The entire country speak in one voice. I expect this to happen. जब अमरीका में डब्ल्यू.टी.सी. पर हमला हुआ था तो सारे अमेरिकन्स ने प्रेज़ीडेंट जॉर्ज बुश का साथ दिया था, उन्हें समर्थन दिया था। तब हमने भी सोचा था कि यदि कभी ऐसा संकट भारत पर आएगा तो सभी लोग साथ देंगे। अभी तक कांग्रेस पार्टी सत्ता में थी, 40 साल उन्होंने राज किया। उन्होंने कुछ अच्छा किया, कुछ बुरा किया, यह तो हमेशा होता है, हरेक पार्टी के साथ होता है और जनता ने भी अपना फैसला दिया। इसके बाद कांग्रेस पार्टी के जमाने में क्या-क्या हुआ, मैं कहना नहीं चाहता हूं। वे मीसा लाए, वे नासा लाए, वे टाडा लाए, वे पी.डी. ऐक्ट लाए। वे कई प्रकार के कानून लाए और उन्होंने सबको जेल में डाला। मुझे भी जेल में डाला गया, उस समय मैं स्टुडेंट था। मैंने कोई जुर्म नहीं किया था, मैं कोई पोलिटिक्स में नहीं आया था। मैंने केवल जय प्रकाश नारायण जी को अपनी युनिवर्सिटी में बुलाया था, उनकी मीटिंग ऑर्गेनाइज़ की थी। बाद में मुझे जेल में डाला गया। 17 महीने मैं जेल में रहा। वह तो अच्छा हुआ कि इससे मुझे भी कुछ एक्सपीरिएंस, कुछ अनुभव हो गया। मगर आज यही पार्टी, यही लोग सिविल लिबर्टीज़ के बारे में, मिसयूज़ के बारे में बात कर रहे हैं जिसे सुनकर मुझे आश्चर्य हो रहा है। बहुत आश्चर्य हो रहा है। ...**(व्यवधान)**...

श्री जीवन राय (पश्चिमी बंगाल) : इंप्रूवमेंट हो रहा है।

SHRI M. VENKAIAH NAIDU: Jibon Royji, we have to learn from each other's experience. I agree. Wise men learn from other's experience, and fools learn from their own experience. My point is very simple. You have taken recourse to certain acts and certain actions in a particular situation. I want to ask all the senior leaders, with all the humility at my command. Do you think the situation in 1975 was more dangerous and more precarious than the present one? There was an attack on Parliament. But for the great sacrifices made by those CRPF jawans and our Parliament

security staff, many of us would not have been here. There was an attack on Parliament. There was an attack on Jammu and Kashmir Assembly. Thousands of people have been killed through out the country. Our neighbour has openly declared that they finally wants to reach Kashmir. I have, with me, all the comments and statements made by those people. And, they want to hoist their flag even on the Red Fort! They are aiding and abetting terrorism. They are funding them. They are giving training to them. They are sending terrorists across the border. We are all aware of it. What is the spread of the ISI in the country? It has spread in the North-East. It has spread in the Southern Region of the country. It has entered Tamil Nadu and even places like Coiambatore, West Bengal, and other parts of the country.

Another biggest disease that has crept into our body politic is that, we equate vandalism with terrorism. What happened in Orissa is a shameful act. It is vandalism. But, when you talk about the incident in Orissa, why do you forget that the Orissa Assembly was attacked twice before -- once supported by the Communist party; and the second time, supported by the Congress party? Not only that, people stormed into the Assembly. They sat in the Chair of the hon. Speaker.

SHRI JIBON ROY: There, vandalism and terrorism are complementing each other. That is the problem

[THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI) in the Chair]

SHRI M. VENKAIAH NAIDU: That is your compliment to what you had done earlier. People stormed into the Orissa Assembly. They sat on the Chair of the hon. Speaker. They sat on the Chair of the hon. Chief Minister and declared that the Chief Minister has been removed and the Speaker has been removed. It was a shameful act. What happened recently is also a shameful act. But, let us not be selective in our condemnation. This is what is happening in this country. The greatest threat to the secularism of this country and the greatest threat to the social fabric of this country is our double standards, is our vote-bank politics. This is what I want to impress upon everybody. Please try to understand. My good friend, Shri Kapil Sibal, whom I admire very much, is not here. ये मुझे अहमदाबाद के बारे में याद दिला रहे हैं और सिब्बल जी ने भी कहा 'पॉलिटिक्स आफ हेट', अर्जुन सिंह जी भी यही बात कर रहे हैं। मैं पूछना चाहता हूं कि देश में 'पॉलिटिक्स आफ हेट' किसने शुरू की? ...(व्यवधान)...मैं आपको याद दिलाना चाहता हूं कि 84 में जब दिल्ली में हत्याकांड हुआ, जैनोसाइड हुआ, उस समय कांग्रेस पार्टी ने क्या कहा? उसने कहा कि जब बड़ा

पेड़ गिरता है तो जमीन हिलती ही है। What a shameful statement! And you accuse us now by saying that we are starting the politics of hate. Let us not try to score political points on this issue. He has referred to it, and that is the reason why I am constrained to touch upon this particular point.

श्री राजू परमार (गुजरात) : गुजरात में क्या हो रहा है, ...**(व्यवधान)**...

SHRI JIBON ROY: Sir, the point is ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): Mr. Jibon Roy don't interrupt ...*(Interruptions)*... Mr. Naidu, you go ahead ...*(Interruptions)*...

श्री राजू परमार (गुजरात) : गुजरात में एक लाख लोग बाहर कैम्पों में पड़े हुए हैं। आप क्या कर रहे हैं? ...**(व्यवधान)**...

श्री एम. वेंकैया नायडु : सर, ये मुझसे जानना चाहते हैं कि गुजरात में सरकार ने क्या किया। गुजरात सरकार ने आर्मी को बुलया, गुजरात सरकार ने फायरिंग का आर्डर दिया। मैं इनसे पूछना चाहता हूं कि इन लोगों ने दिल्ली में क्या किया? क्या इन्होंने दिल्ली में आर्मी को बुलाया? ...**(व्यवधान)**... दिल्ली में पूरे सिख समुदाय का नरसंहार किया गया ...**(व्यवधान)**... दिल्ली में पूरे सिख समुदाय का 3-4 दिन कंटिन्यू नरसंहार किया गया। ...**(व्यवधान)**... आपने पुलिस को नहीं बुलाया, लाठीचार्ज नहीं किया और फायरिंग का भी आर्डर नही दिया। ...**(व्यवधान)**... शर्म आनी चाहिए, देखो भाई, जो गुजरात मे हुआ वह पहले दिल्ली में हुआ, दोनों गलत हैं। ये दोनों घटनाएं निन्दनीय हैं। ...**(व्यवधान)**...

श्री जीवन राय : जो कम्युनलिज्म हैं ...**(व्यवधान)**...

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): No interruptions please. No. No interruptions ...*(Interruptions)*... Nothing will go on record. We have to finish it by 7.00 pm. Discipline of time we must abide by. You have to control your exuberance.

SHRI M. VENKAIAH NAIDU: There was an allegation that ये जल्दबाजी में लाए हैं। क्या जल्दबाजी में लाए हैं? सब लोगों ने टाडा को फिर से लैप्स करने के लिए अलाउ किया, बाद में कानून लाएं। यह कानून राज्य सभा में प्रस्तुत हुआ है, स्वीकार नहीं हुआ है। इसके लिए होम मिनिस्ट्री की इंटर मिनिस्ट्रियल कमेटी बैठाई गई, बाद में लॉ कमीशन को भेजा, चीफ मिनिस्टर्स कांफ्रेंस में भी इसके बारे में चर्चा हुई, स्टेट्स में भी भेजा, उनके ओपिनियन्स भी लिए गए, कंसलटेटिव कमेटी होम मिनिस्ट्री में भी डिस्कस किया गया। अखबारों में जो खबर आई उसके अनुसार हमारे कांग्रेस के सदस्य और कम्युनिस्ट सदस्य ने कहा कि ऐसे कानून की जरूरत है। मैं नाम नहीं लेना चाहता, यहां के ऐसे बहुत लोग हैं, अभी भी जो सदस्य हैं, वे भी हैं। सी.पी.आई. (एम) ने कहा है, कांग्रेस वालों ने कहा है ...**(व्यवधान)**...

श्री नीलोत्पल बसु : नाम नहीं लेंगे तो मत बताइए ...**(व्यवधान)**...

श्री नरेन्द्र मोहन (उत्तर प्रदेश) : आपने गुलाम नबी आजाद का नाम सुना है ...**(व्यवधान)**...

श्री नीलोत्पल बसु : ये तो सी.पी.आई.(एम) के बारे में बोल रहे हैं **...(व्यवधान)**...सी.पी.आई.(एम) का कौन सा मैम्बर बोला है **...(व्यवधान)**... नाम बताएं **...(व्यवधान)**...खुद खंडन किया है, हजार बार किया है **...(व्यवधान)**...

श्री नरेन्द्र मोहन : अखबारों में छपा है **...(व्यवधान)**...

श्री नीलोत्पल बसु : ऐसी बात मत बोलिए **...(व्यवधान)**...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Please, Nilotpalji. ...*(Interruptions)*... No interruptions. Nothing will go on record except Mr. Venkaiah Naidu. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: Sir, you must put it in silver lines, "पार्लियामेंट में प्रोवोक नहीं करना नीलोत्पल जी ". God save Parliament, Sir. सर, वे मुझ से पूछ रहे हैं I am not a person to run away. I will have to respond to him. It is a parliamentary system. He was asking me as to what the Congress had said and what the CPM had said. He was asking about the names. First, I thought, why I should take names. But, since he is asking me to name, I am quoting from the *Pioneer,* dated 7th November, 2001. ...*(Interruptions)*... Sir, he is attributing motives to newspapers. ...*(Interruptions)*... He is questioning their impartiality. ...*(Interruptions)*... According to him *Ganashakti* and *Janashakti* are the only newspapers. ...*(Interruptions)*...

SHRI NILOTPAL BASU: Everybody knows how the *Pioneer* gets published. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): The Pioneer is not here to defend itself. So, please do not refer to the *Pionee*. ...*(Interruptions)*... We have just been talking about the freedom of the Press, about the sanctity of the Press. ...*(Interruptions)*... So, please do not refer to the Press. ...*(Interruptions)*... No names. ...*(Interruptions)*... Nothing will go on record.

SHRI M. VENKAIAH NAIDU: Sir, this sort of interruptions ...*(Interruptions)*... Sir, according to the report of the Consultative Committee..*(Interruptions)*... Do you want to say something? I can yield to you. There is no problem.

SHRI GHULAM NABI AZAD (Jammu and Kashmir): No, you mentioned my name. That's why I stood up.

6.00 p.m.

SHRI M. VENKAIAH NAIDU: I like you. ...*(Interruptions)*... Do you have any objection to mentioning your name? ...*(Interruptions)*... I like you.

SHRI GHULAM NABI AZAD: Sir, first of all, let me make it clear that I oppose this Bill tooth and nail. If the report of the Consultative Committee is being wrongly quoted here, I am sorry... I would like to put on record. ..*(Interruptions)*... No; no. Not at all. ...*(Interruptions)*... Not at all. This is totally wrong. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Now, please sit down. You have clarified your position. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: Sir, all the same, the meeting of the Consultative Committee was held. According to the report of the Consultative Committee ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Sir, so far as the Consultative Committee is concerned..*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Naidu, the reports of Consultative Committees are not referred to here. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Sir, so far as..*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI):Mr. Pranab Mukherjee, I have already told him. ...*(Interruptions)*...

SHRI PRANAB MUKHERJEE: Sir, so far as the Consultative Committee is concerned, it is presided over by the concerned Minister. So far as the Consultative Committee attached the Home Ministry is concerned, it is presided over by the Home Minister. The proceedings of the meeting are prepared under the directions of the Home Minister.

The Minister of Home Affairs himself is present here. Some reports have been quoted by the hon. Minister, Shri Naidu, which have been contradicted by the Member concerned. It is the responsibility of the Home Minister that either he or his junior colleague presided over the Consultative Committee, should clarify the position.

SHRI M. VENKAIAH NAIDU : This has appeared in the elventh month. I would have been happy ...*(Interruptions)*...

THE VICE CHAIRMAN (SHRI T.N. CHATURVEDI) : Please, proceed further ...*(Interruptions)*...

SHRI. M. VENKAIAH NAIDU : I am not quoting ...*(Interruptions)*...

SHRI GHULAM NABI AZAD: It should be clarified first ...*(Interruptions)*...

SHRI NILOTPAL BASU: Everybody knows how the 'Pioneer' has published.

THE VICE CHAIRMAN (SHRI T.N. CHATURVEDI) : Please.

श्री संघ प्रिय गौतम : पायनियर हिन्दुस्तान का सब से पुराना अखबार है। ...**(व्यवधान)**...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : No interruptions now ...*(Interruptions)*...

SHRI GHULAM NABI AZAD: Mr. Vice-Chairman, I went to the extent that even as the Union Cabinet Minister, I opposed the continuance of TADA. How can they expect me to support the POTO?.. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : Mr. Azad, you have clarified your position ...*(Interruptions)*... Your position has gone on record..*(Interruptions)*... Your clarification and position have gone on record..*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: I respect..*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : No, nothing. No interruptions ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: Mr. Vice-Chairman, Sir, what is this?... ...*(Interruptions)*... I respect Pranab babu for what he has said or even Shri Ghulam Nabi Azadji also. My only point is, if they had been kind enough to disown it and it had appeared in the newspapers, then it would have been better. Now, I have raised it.

SHRI GHULAM NABI AZAD: No, we don't read newspapers regularly.

SHRI M. VENKAIAH NAIDU: You don't read. Right. No problem.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : That is all right. Proceed further.

SHRI M. VENKAIAH NAIDU: If you don't have the habit of reading newspapers daily, then, it is fine. Secondly, the country has fought four high-intensity wars and lost a total 5, 468 people, in the last years. With regard to low intensity, so-called, proxy war, the total number of civilians and other people who lost their lives is 61,013. Sir, we have lost 8706 security personnel and six lakhs people in the country have become homeless, because of the terrorist activities in the country. Besides the expenditure of our Armed Forces, merely for maintaining the set up of the security forces to fight the insurgency, cross-border terrorism, the cost is somewhere around Rs. 46,000 crores. With such a record of crime, and the explosives that have been confiscated by our security agencies are around 48,000 kgs and with the widespread problem of insurgency, and terrorism in different parts of the country, ruled by different political parties, is it not the time that we think in terms of taking strong action against such forces through legislative measures? The people are saying that what is required is will. But, what is required is will and also a Bill. A Bill is required and a political view is also required. Sir, my point is very simple. We have been the victim of terrorism for the last two decades, but I must say that the attack on our Parliament on 13th December was a new watermark -- may I say, a new blood mark- in the history of Pakistan-sponsored terrorism in India. It is impossible for any patriotic Indian to take this lying down. I only want to underline this. The entire country wants the Government to act, wants the Parliament to legislate such a legislation which can tackle this menace. People are talking about civil liberties, but, according to me, civil liberties are for civilians. Human rights are for human beings. I don't consider any terrorist as a human being. Human rights is a major issue in this country. When thousands of people are killed, when many women are made widows, when the children become orphans, these organisations do not raise their voice at all. They don't sympathise with such people. Sir, a train was set on fire in Andhra Pradesh. Fifty-six people were burnt to death, and people are talking of civil liberties. But those people have been arrested. A bus was set on fire. Forty-eight people were killed. Fortunately, after a long gap, we would have convicted them. But people were saying, 'show mercy'. A former Prime Minister was killed in a blast. People are saying, 'show mercy'. I have no mercy for such people. I have no mercy for Rajiv Gandhi killers. I have no mercy for Indira Gandhi killers. I have no mercy for the people who burnt the Kakatiya Express. I

have no mercy for the people who burnt the train at Godhra, its compartments.

SHRI M.P. ABDUSSAMAD SAMADANI (Kerala) : Mr. Chairman, Sir, Rajiv Gandhi. ...*(Interruptions)*...

THE VICE CHAIRMAN (SHRI T.N. CHATURVEDI) : No, no interruptions. Nothing will go on record. ...*(Interruptions)*... You will have your own time.

SHRI M.P. ABDUSSAMAD SAMADANI: Rajiv Gandhi killers were punished as per the ordinary law.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Let him complete his speech. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: We have entered a new phase. The new phase is that, Pakistan has taken this proxy war against India to a quantitatively and qualitatively new level. They have thrown a challenge to us. We have to respond to them at the same level. We have to understand their capacities, their calibre and also their strategies. We must react to it accordingly. The interest of the country is to safeguard the people of India, not the terrorists, not the people who are trying to subvert India. Sir, this legislation is aimed at doing that. Secondly, Sir, what I say is, please go through the Prime Minister's statement. He spoke on behalf of the entire nation when he said, "This time, the fight should be such that it would be the last on the issue of terrorism." How long can we have this luxury of terrorism? How long should we tolerate this sort of nonsense that has been heaped on our country? We have to come to a conclusion. It is time that we all combine together, join together and deal with it in a firm manner. Sir, the States are ruled by the different political parties. There are 13-14 States which are ruled by the Congress Party. There are States which are ruled by the AIADMK; there are States which are ruled by the CPI(M); there are States which are ruled by the Telegu Desam, the BJP, etc; different political parties are ruling different parts of the country. After all, these laws are going to be implemented finally by the States; and law and order is a State problem. Sir, what I am suggesting is that this legislation has been brought before this House after detailed deliberations at various levels. The Law Commission has also gone through each and every aspect of this legislation, and made certain recommendations. The Chief Ministers had discussed it. The States have come forward. We also had the example of Karnataka Government. The Karnataka Government passed a

legislation, which is called 'KCOCA'. The Maharashtra Government had earlier enacted a similar legislation, which is called 'MCOCA', and which is being implemented truthfully and faithfully by the Congress and the NCP Alliance Government in Maharashtra. And, rightly so. When they did not have this legislation, the conviction rate was around 6 per cent, but with this new dispensation of MCOCA, the conviction rate is somewhere around 70 per cent. The people are saying that it is only a small number, and that is why the percentage is high. If some legislation is yielding good results, should we not think about it and take it seriously? Sir, a similar legislation is good in Karnataka; a similar legislation is good in Maharashtra, but a similar legislation at the national level is bad! How can any political party, any political leadership, take such a stand? It will be nothing but duplicity; it is nothing but double standards. लोग बाहर कह रहे हैं कि देखो उन्होंने जो कानून, विधेयक कर्नाटक में बनाया, वह अच्छा है, कर्नाटक में इसके लिए जेल है पर दिल्ली में नहीं। यह क्या है? मुझे समझ में नहीं आ रहा है। कोका फाइन, मोका फाइन। कर्नाटक में कोका, महाराष्ट्र में मोका, पर दिल्ली में धोखा। यह क्या है? इसके बारे में सोचना चाहिए ...(व्यवधान)...यह तो धोखा ही होगा। यह आपको क्या हुआ है? आपको तो कोई अंदर डालने वाले नहीं हैं। बंगाल में आपकी सरकार है तो निश्चिंत रहिए, आपको कुछ नहीं होगा। बंगाल में भी उन्होंने सोचा है। उन्होंने मुझे याद दिलाया। बंगाल में भी ऐसा कानून लाने के लिए सोचा गया था। मुख्य मंत्री ने, कैबिनेट ने उसे पास किया था ...(व्यवधान)...

श्री जीवन राय : मैं देश के लिए सोचता हूं। टेरोरिज्म प्राब्लम है तभी मैं सोचता हूं ...(व्यवधान)...लेकिन कम्युनल लोगों के हाथ में इतनी पावर नहीं दूंगा जिससे कि हिंदुस्तान को डिवाइड कर सकें।

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): No interruptions please

SHRI M. VENKAIAH NAIDU: Sir, people talk of class war, they talk of division; it is surprising. Please try to understand that your ideology has become outdated; nobody is taking care of it; nobody is talking about it. The Communist and the Congress are together in Hyderabad. ...*(Interruptions)*... He provoked me. ...*(Interruptions)*... I have respect for Communist party leaders because they have been in the political field. They have also been maintaining certain standards in public life. I followed many Communist leaders also closely. But my only worry is, they are wasting their entire life on a non-possible ideology. Now, I think, they will take some intelligent and useful decision. ...*(Interruptions)*....

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Jibon Roy, he is not talking about you. He is talking about very senior leaders. He is not talking about you.

SHRI M. VENKAIAH NAIDU: Sir, any country, any political Party, has to do introspection. There is no thing wrong about it. We had the Soviet model of socialism, then we went in for...*(Interruptions)*...

SHRI GHULAM NABI AZAD: They should take some lesson from Gujarat. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: Whether we should be guided by Gujarat or whether we should be guided by Delhi, has to be decided. The preference is ours.

My point is very simple. Today, we are faced with an unprecedented situation. We are facing a challenge both from outside and from inside. There are statements made by many of the terrorist leaders. I do not want to take much of the time going through the statements made by all those terrorist leaders. They have said they want to march to Kashmir; they want to finally hoist their flag on the Red Fort. If these statements are read in the House, if they are also carried out throughout the country, Sir, I am afraid, again, that may lead to a different situation. The statement made by Musharrafji, the statement made by Lashkar-e-Toiba, the statement made by Jaish-e-Mohamed, the statement made by the SIMI chief, the statements made by Al-Uma leaders...*(Interruptions)*...

SHRI RAJU PARMAR: .....the statement made by the RSS. ...*(Interruptions)*....

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You proceed with your speech.

SHRI M. VENKAIAH NAIDU: Sir, the problem is, my friends have more confidence in the ISI than in the RSS. That is the problem. They feel that the ISI will not do anything. ...*(Interruptions)*...

श्री राजू परमार : वीएचपी को बैन कर दो! ...**(व्यवधान)**...

श्री एम. वेंकैया नायडु : हां, वीएचपी को बैन करो और सिमी का स्वागत करो। देश का भला होगा। यह है इनका नारा और टैरोरिस्ट्स के खिलाफ कानून मत बनाओ। ...**(व्यवधान)**...

श्री के. रहमान खान : वीएचपी को बैन किया? ...**(व्यवधान)**...वीएचपी को भी बैन करो, सिमी को भी बैन करो।

श्री एम. वेंकैया नायडु : आपने समर्थन नहीं किया। ...**(व्यवधान)**...

श्री के. रहमान खान : तो किसने समर्थन किया? He is misleading the House, Sir. ...*(Interruptions)*....

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : अब आप समाप्त करिए। ...**(व्यवधान)**...

श्री के. रहमान खान : अगर आपमें हिम्मत है तो सिमी को भी बैन करो, वीएचपी को भी बैन करो और बजरंग दल को भी बैन करो। ...**(व्यवधान)**...यह बड़े शर्म की बात है, जो हुआ है वह शर्म की बात है। ...**(व्यवधान)**...

श्री एम. वेंकैया नायडु : एक सदस्य बोल रहे हैं उनको डिस्टर्ब करना क्या यह शर्म की बात नहीं है? क्या यह बहुत आनंद की बात है?

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : Please do not interrupt him.

SHRI M. VENKAIAH NAIDU: Sir, the Vishwa Hindu Parishad was banned earlier. The ban was lifted by the same people. We have banned the SIMI. We want to take action against all the terrorist organisations in the country.

AN HON. MEMBER: .....including the Bajrang Dal.

SHRI M. VENKAIAH NAIDU: That is his wish. ...*(Interruptions)*...

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : प्लीज़, डॉट इंटरप्ट।

श्री एम. वेंकैया नायडु : सर, मैं क्या करूं, मैं तो बोलना चाहता हूं, मगर वे लोग मुझे बीच में ही इंटरप्ट कर रहे हैं। सर, मेरी विनती यह है कि ...**(व्यवधान)**...

श्री जीवन राय : ठीक है, आप कंप्लीट करिए। ...**(व्यवधान)**...

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : जीवन राय, प्लीज़ ...**(व्यवधान)**...

श्री एम. वेंकैया नायडु : सर, माई प्वायंट इज़ वैरी सिंपल, सर, देश में तो बहुत दिन से हम देख रहे थे कि बीजेपी वाले ऐसा करेंगे, बीजेपी आएगी तो यह होगा, वह होगा। ...**(व्यवधान)**...तीन साल में कुछ हुआ नहीं। चार साल में कुछ नहीं हुआ। चार साल में मैं दावे के साथ कहना चाहता हूं कि I am ready to hang myself. On the last four years of our governance and in the last 40 years of their governance, let there be an honest public debate as to how many communal clashes were there in our regime and how many were there in their regime. 40 साल तक सत्ता में रहे, उनको इतनी भी * ...**(व्यवधान)**...

श्री के. रहमान खान : गुजरात में जो हुआ है, उस पर * ...**(व्यवधान)**... गुजरात में जो हुआ है, उस पर * ...**(व्यवधान)**...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Please use parliamentary language. Those words will be removed. आप भी खत्म करिए।

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* Not recorded.

SHRI M. VENKAIAH NAIDU: My point is very simple, Sir. We have ruled the country for four years. There was no tension; there was only attention towards development. It only started with Godhra. You know who are the accused in Godhra. ...*(Interruptions)*... Everybody knows who the accused is in Godhra. I need not talk about it. I need not talk about the accused in Godhra. I will not speak about it also. The matter is before a judicial Commission. I am not here to speak about the identity of the accused in Godhra. I am not doing that. My point is very simple. आपका 40 साल का और हमारा 4 साल का जो इतिहास है, वह बराबर जनता के समक्ष है और जनता इसे देखेगी। Sir, my only request is that ...*(Interruptions)*...

श्री कपिल सिब्बल : यू.पी. में, असम में ...**(व्यवधान)**... क्या-क्या हुआ, सब को याद है।

श्री एम. वैंकैया नायडु : मध्यप्रदेश में झबुआ में, मालेगांव में महाराष्ट्र में क्या हुआ, सब को याद है। ...**(व्यवधान)**... Sir, my point is very simple. ...*(Interruptions)*... जब हमारा राज था, गुजरात में जो कुछ हुआ, उस अपवाद को छोड़कर जिसे सभी ने कंडैम किया है, हमारे जमाने में देश में शांति रही, जनता में प्रशांत रहा। लेकिन हमारे विपक्ष में अशांति रही। मैं भगवान से उन्हें शांति देने के लिए प्रार्थना करूंगा। ...**(व्यवधान)**... They want tension. They have been talking about it for the last four years. Unfortunately, it has happened in Gujarat. It has come in handy to them. The Prime Minister and the Home Minister have spoken about it. I will not speak about it. Sir, coming back to the provisions of the Bill, it is a test for all the political parties. The country is watching us. Let us see the conviction rate under TADA, under the Indian Penal Code, and under the Criminal Procedure Code. See the conviction rate under MOCA; see the conviction rate under the other State legislations, which are there in Andhra Pradesh, Karnataka and Maharashtra. Let us also consider the weapons that the terrorists are using; consider their reach, consider their ability to silence the witnesses. It is not an ordinary case where an ordinary witness is coming forward and giving evidence, and an ordinary criminal is being tried. Sir, the Criminal Procedure Code is for criminals. Terrorists are not criminals. They are *rakshasas*, they are savage people. You are dealing with them. That is why I agree with what the hon. Member, Shri S.B. Chavan, has said. He has said that they had to be dealt with effectively, in such a manner that they understand. Secondly, consider the twelve people who are supporting them from outside, consider their target. Do you want to offer them the necessary facilities by not enacting a legislation, to effectively counter this menace, once and for all? The people of this country want peace in the country; they want stability; they want progress. They want focus on roads; drinking

water, electricity, poverty alleviation and other programmes. The Government is determined to do it. At the same time, the POTO should be saved. Our internal security should be maintained, and you must also take into account the capacity and calibre of our opponent. Keeping that in mind, the Government has come up with this legislation. All the formalities and necessary requirements have been gone through. It has not been brought in haste, like it was brought during the emergency. During that period, the entire opposition was put behind the bars, and the House discussed it and passed it. We have not done any such thing. There were elaborate discussions at every forum that was available; with every party. Shri Kapil Sibal was saying that they should have been taken into confidence. How many meetings were held by the Prime Minister? How many communications were sent to the State Governments? This has to be kept in mind. That is why I say: " How can anybody say that banning an organization, that too, a terrorist organisation, and freezing their funds, is a draconian measure?" How can it be described as draconian? ...*(Interruptions)*... Mr. V.V.Raghavan, I hope, you are not sitting on the Chair. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Raghavan, I have already said that I will take care of it. ...*(Interruptions)*... I may not be active, but I am not resting. I know the responsibility of the Chair. ...*(Interruptions)*...

SHRI M. VENKAIAH NAIDU: Sir, I would have completed my speech much before, but for the interruptions. Sir, the enemy respects no border. He can strike anywhere and at any time. In this battle, every citizen has to think himself or herself as a soldier, and perform the role with soldier-like discipline, devotion and bravery. I will take only one minute, Sir. I would like to quote.

I quote:

> "December 13 leaves no doubt in our minds that more daring attacks are a distinct possibility. How do we protect ourselves against this? I can always allude to what I see here in the US after September 11. There is a certain paranoia about security that has gripped even the common man. Members of the public are amazingly alert to report to the police even the slightest happenings that they believe have some implications for national security. This has to become an obsession with us in India. Anything short of that will not be enough."

This is the instant reaction after his visit to America. I only appeal to my friends that the need of the hour is a change in the mindset. We have to think about the country. We can score political points on a variety of issues. We have a lot of time, and we will also have enough time to discuss those issues. Today, coming back to the main issue, are we helping the nation or are we harming our own cause? This has to be borne in mind and this test has to be applied by all political parties irrespective of where they are, whether this side or that side, and then we must come to a conclusion. We will be doing the greatest disservice to the nation, if we are not able to live up to the expectations of the people and go in for stringent laws and action to deal with terrorism in the country, to root it out from the soil of our nation. This is my earnest appeal to all the Members of this House, as a Member, not as a Minister. As a Member, I feel that we should all think about this, come to a conclusion and pass this Bill.

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): Shri R.K. Anand. Mr. Das, what is the problem?

DR. M. N. DAS (Orissa) : Sir, when hon. Venkaiah Naidu referred to the sad attack on the Orissa Legislative Assembly, he referred to the attack on the Orissa Legislative Assembly in 1964. If I have understood him correctly, he implied to mean that the Congress engineered that attack on the Orissa Legislative Assembly. In fact, it was just the opposite. There was a Congress Government against which there was a student movement and thousands of students attacked the Assembly.

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): I don't think your name or anything was mentioned by him. Please. Shri R.K. Anand.

SHRI R. K. ANAND (Jharkhand): Thank you very much, Mr. Vice-Chairman, Sir. My turn has come after the 45 minute speech of Mr. Venkaiah Naidu. He has been firing left and right. I must assure him that we are not opposing this Bill only for the sake of opposing it. We are opposing this Bill on some fundamental issues. We must tell you that we are not against the enactment of any law to deal with terrorism. But we don't want you to make a law which will take away the rights that have been given to us under articles 19(3) and 21 of the Constitution. I am opposing this Bill on three fundamental points. Please take clauses 18 and 19 of the Bill. I am not able to understand the need for clauses 18 and 19 of the Bill. If we read clauses 18 and 19 of the Bill, we find that they are totally *ultra vires* of the Constitution. As of today, we have an enactment of

1967. I must remind you that prior to the 1967 Act, there was an Act of 1951, the Criminal Law Amendment Act, 1951, where there was a similar provision as in the 1967 Act, that is, section 15 (2) of that Act. Just as in clause 60 of this Bill, where you have an Advisory Board, we had an Advisory Board under that Act. That Act was challenged before the Supreme Court and a five-Judge Bench of the Supreme Court set aside that Act, by making the following observations in paragraph 16 of the judgement, in the year 1952. It observed:

> "Giving due weight to all the considerations indicated above, we have come to the conclusion that section 15(2)(b) cannot be upheld and falling within the limits of the authorised restrictions on the rights conferred under article 19(1) of the Constitution. The right to form association or union has such wide and varied scope for exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields that the vesting of authority in the executive Government to impose restrictions on such rights...."

Sir, this is very important.

"Without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in judicial inquiry is a strong element which in our opinion must be taken into account in judging the relevance of the restrictions imposed by Section 52 of the Act". Than they say, "No summary and what is bound to be largely one-sided review by an Advisory Board even where its verdict is binding on the executive Government, can be a substitute for a judicial inquiry". Now the same enactment was again considered in the year 1995 and the Supreme Court again said, "Unless you have a judicial inquiry, the Act cannot be upheld". My submission before the House is, let us not enact a law which takes away your right under article 19(1) (c) of the Constitution.

Now let us examine clause 18 of the Bill. If we read clause 18, it does not give any reasons on the basis of which an association is sought to be banned. How do you expect a member of an organisation to make a representation to you for the purpose of a review and when the review is allowed, there is no clear cut authority? It has to be by a judicial authority which has to decide whether there are sufficient grounds on the basis of which you are seeking to ban a particular organisation. If we go back to the Act of 1967, look at Sections 3 and 4. Section 3 very clearly indicates

that a notification can be issued specifying the grounds on the basis of which a particular organisation could be declared as unlawful. You are giving a chance of being heard to the party concerned to represent before the authority. It is obligatory on the Government to place the notification before the court and the court has to take a decision. In ordinary circumstances, the notification is not valid, is not effective till it is confirmed by a sitting judge of the High Court. Now what is the position of hearing? You do not have any provision for deciding the matter in a judicial inquiry by a sitting judge of the High Court. Clause 16 says that either you may have a sitting judge or a retired judge and their two members on the left and right. The two members on the left and right can overrule either the sitting judge or the retired judge of the High Court. My submission before the House is that these two provisions are totally *ultra vires* the Constitution which have already been held to be so in the year 1952.

My next point is regarding the right of privacy which has been conferred by article 21 of the Constitution. All countries of the world including America have an enactment called the Electronic Communication Privacy Act of 1986. These powers have been given to a judge, to a judicial authority. Before you do a wire tapping, you have to apply before a judge and the judge after hearing the petitioner gives the authority to the particular individual to start recording. Here what you have done is, the right of privacy has been taken away. We have a judgement of 1996 of the Supreme Court in which they said, "You can give authority for wire tapping on sufficient grounds and that authority will not be the investigating officer. The information which will be given to the investigating officers will be limited to the part of investigation which he is supposed to do". You kindly see what is sought to be done in clause 42 of the present enactment. It says, "An interception under this Chapter may be conducted in whole or in part by a public servant, acting under the supervision of the investigating officer authorised to conduct the interception". You are giving all kinds of powers to the police officer. I must remind you as to what was said before this House on 11th May 1989 by Shri Yashwant Sinha. He said, "A constable in London enjoys far greater credibility then your Director-General of Police here. Do not provoke me to say anything more." What you are doing here is that you are giving all the powers to the police authorities to wire-tap. Wire-tapping is a very serious matter which infringes upon the fundamental right to privacy. Your talks on telephone are very private in nature. And, this is a very serious matter which cannot be taken lightly. Mr. Sinha further said, "I have no doubt, as Mr. Malaviya said, if Gandhi or

Tagore had lived now, they too would have been put behind the bars under TADA."

Sir, the third objection which I have is, as regards clause 49. I feel that there is something wrong in this clause. I understand that clause 49 (5) says that there is no provision for an anticipatory bail. There is no problem about it. But, look at sub-clause (6). It says: "Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard"; meaning thereby that before the bail is to be granted, a notice has to be given to the Public Prosecutor. Okay; fair enough. But there is also a proviso to it -- this proviso is very relevant -- which says: "Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of sub-clause (6) of this section shall apply"; meaning thereby that this sub-clause will apply after completion of one year. So, there is no provision in the Bill for the first one year. Now, if we read this sub-clause and the proviso together, do we take it that for a period of one year, we cannot go before the Prosecutor? And, as per this sub-clause, the man would be kept under detention without any hearing.

So, Sir, in view of the above-said lapses, I cannot support this Bill.

प्रो. राम गोपाल यादव (उत्तर प्रदेश) : उपसभाध्यक्ष महोदय, मैं माननीय गृह मंत्री जी द्वारा प्रस्तुत किए गए इस विधेयक का विरोध करने के लिए खड़ा हुआ हूं। मेरा यह मानना है कि यह विधेयक पूरी तरह से अवांछनीय और अनावश्यक है। मुझे ऐसा लगता है कि इस तरफ बैठे हुए मित्रों को यह गलतफहमी है कि इस विधेयक के पारित हो जाने और इस संबंध में कानून बन जाने के बाद आतंकवाद समाप्त हो जाएगा। महोदय, समाजवादी पार्टी के नेताओं ने पहले भी यह कहा है कि जो आतंकवादी हैं, जो आतंकवादी गतिविधियों में लिप्त हैं, वे देशद्रोही हैं और उनके लिए कोई दंड पर्याप्त नहीं है, उनके लिए पोटो की नहीं बल्कि बुलेट की जरूरत है। यह आतकवाद सीमा पार से आ रहा है और इसमें कुछ अफगानिस्तानी लोग भी शामिल हो सकते हैं। मैं यह जानना चाहता हूं कि क्या पोटो उन पर भी लागू होगा?

महोदय, आपको याद होगा और यह बात सारा देश जानता है कि बहुत सारे लोगों को टाडा के अंतर्गत बंद किया गया था, उनमें बाहर के लोग भी थे लेकिन एक दिन भी उन पर मुकदमा नहीं चला और सरकार को उन्हें बाइज्ज़त कंधार में छोड़ना पड़ा। वे लोग टाडा के अंतर्गत जेलों में बंद थे। अभी जसवंत सिंह जी जिन मोहम्मद उमर को कंधार छोड़कर आए थे, उन पर मेरठ में टाडा का मुकदमा कायम था, उस मुकदमे से तो वह छूट गए थे लेकिन वे दूसरे मामलों में तिहाड़ जेल में बंद थे। ये जो कानून हैं, अगर इनसे आतंकवाद रुकना होता तो बहुत पहले रुक गया होता।

उपसभाध्यक्ष महोदय, पंजाब में टाडा लगाया गया था, उससे वहां आतंकवाद नहीं रुका। प्रशासन ने जब वहां ऐक्टिवली काम किया, तब आतंकवाद रुका। दुर्भाग्य यह है कि जब-जब कानून का सही तरीके से इंप्लीमेंटेशन नहीं होता है, तब अपनी असफलता को छिपाने के लिए नयी-नयी किस्म के कानूनों को लाने का प्रयास किया जाता है। महोदय, जब संसद पर हमला हुआ था, पोटो तब भी था, क्या पोटो से हमला रुक गया? अभी कश्मीर में रोजाना आतंकवादियों से झगड़े होते हैं, वे गोली से ही रुकते हैं। इसलिए मैं कहना चाहता हूं कि पोटो से आतंकवाद नहीं रुकेगा। यह पोटो तो केवल हिंदुस्तान में सत्ताधारी दल के विरोधी लोगों को आतंकित करने के लिए और माईनॉरिटीज़ के लोगों को आतंकित करने के लिए लाया जा रहा है। आतंकवाद विरोधी विधेयक नहीं है श्रीमन्। उत्तर प्रदेश में चुनावों के दौरान पोटो को मुद्दा बनाकर आप लोग गए। कई केन्द्रीय मंत्रियों ने मीटिंग में यहां तक कहा कि जो पोटो का विरोध करते हैं वह देशद्रोही हैं।

श्री एम. वेंकैया नायडु : किसी ने नहीं कहा।

प्रो. रामगोपाल यादव : कहा है, मैं नाम नहीं लेना चाहता हूं, लेकिन कहा है। अपने मंत्रिमंडल के सीनियर लोगों से पूछिए, उन्होंने यह कहा है। लेकिन रिजल्ट क्या रहा? उत्तर प्रदेश की 80 प्रतिशत जनता ने आपके खिलाफ वोट दिया, केवल 20 प्रतिशत लोगों ने आपको वोट दिया। उत्तर प्रदेश में जो चुनाव हुए उसमें समाजवादी पार्टी को निशाना बनाकर यह कहा जा रहा था। 80 लोक सभा सीटों में 40 लोक सभा सीटों पर समाजवादी पार्टी आगे है और आप 18 सीटों पर आगे हैं। तो पहला तो मेरा बिन्दु यह है कि किसी भी तरीके से पोटो, आतंकवाद को रोकने के लिए कोई सक्षम तीर नहीं है। आतंकवाद को रोकने के लिए जिस तरीके से कार्य करना चाहिए, जो साधन अपनाए जाने चाहिए और वह साधन बोर्डर पर भी अपनाए जा रहे हैं, तो दूसरी जगह भी वे साधन अपनाए जा सकते हैं। दूसरे, मैं इस विधेयक का जो विरोध कर रहा हूं वह इस आधार पर कर रहा हूं कि जो रूल आफ लॉ है, जो हमारे डेमोक्रेटिक सिस्टम की मूल आत्मा है, यह उसके खिलाफ है। प्रो. डायसी से लेकर अब तक जितने बड़े पौलिटिकल साईंटिस्ट हुए हैं उन सबका यह मानना है कि विधि के शासन के अन्तर्गत किसी भी व्यक्ति को तब तक दंडित नहीं किया जा सकता जब तक वह किसी प्रचलित कानून के उल्लंघन का दोषी न हो। लेकिन इसमें केवल संदेह के आधार पर In order to prevent ऐसा न करे कि उन्हें पहले ही रूल आफ लॉ के खिलाफ जेल डाल दें। तीसरी बात यह है कि यह विधेयक फंडामेंटल राइट्स का भी उल्लंघन करता है। श्रीमन्, मौलिक अधिकारों के अन्तर्गत अनुच्छेद-20 के सब-सैक्शन -3 में यह कहा गया है कि किसी भी व्यक्ति को उसके ही खिलाफ यानी अपने ही खिलाफ गवाही देने के लिए विवश नहीं किया जा सकता। He can not be compelled. लेकिन इस विधेयक के अन्तर्गत पुलिस में जो कंफेसन है वही कोर्ट में मान्य होगा, यानी व्यक्ति को अपने ही खिलाफ गवाही देने के लिए विवश किया जा रहा है, जो असंवैधानिक है। तो संविधान के जो गारंटेड फंडामेंटल राइट्स हैं उसका भी यह उल्लंघन करता है। न्याय शास्त्र के मूल सिद्धांत के भी यह खिलाफ है। मैं कोई ज्यूरिस्ट नहीं हूं, यहां पर बहुत से इमिनिएंट लॉअयर्स ने अपनी बात कही और आगे भी और लोग कहेंगे। लेकिन न्याय शास्त्र का यह मौलिक सिद्धांत है कि जो आरोप लगाए वह ही आरोपों को सिद्ध करे। लेकिन इसमें कोई भी आरोप लगा दे, पुलिस का कोई कांस्टेबिल लगा दे, लेकिन सिद्ध आपको ही करना पड़ेगा कि आप निर्दोष हैं। माननीय गृह मंत्री जी यहां पर नहीं हैं, आप कितना ही कहें कि इसका दुरुपयोग नहीं होगा। लेकिन क्या

यहां बैठे हुए लोग थोड़े ही इसको इम्प्लीमेंट करेंगे जब यह कानून बन जाएगा? अगर पुलिस का एक दरोगा किसी व्यापारी से नाराज हो जाता है, क्योंकि अगर दरोगा उस व्यापारी से कुछ सामान खरीदे और वह व्यापारी उससे पैसा मांग ले तो वह दरोगा नाराज होकर उस व्यापारी के खिलाफ एक लाईन लिख सकता है कि आतंकवादी लोगों से इसके संबंध हैं। वह जेल में चला जायेगा। इसके कारण पूरा देश ब्लैकमेल होगा और बहुत सारे निर्दोष लोग जेल में पड़े रहेंगे। ऐसा होते हम लोगों ने देखा है, चाहे कोई भी प्रिवेंटिव लॉ लाया गया हो। जब भी इस तरह का विधेयक लाया जाता है तो सत्ताधारी दल यह गारंटी देने की कोशिश करता है कि इसका दुरुपयोग नहीं होगा, इसमें बहुत सेफगार्ड हैं। डिफेंस आफ इंडिया रूल्स के बारे में भी यही कहा गया था, लेकिन उसका दुरुपयोग हुआ। मीसा के बारे में तो आप अभी कह रहे थे कि हम भी जेल में रहे, बहुत सारे लोग जेल में रहे, लेकिन जिन्होंने मीसा लगाया था, उनका क्या हश्र हुआ था, क्या इससे आपने कुछ नहीं सीखा है? मीसा का दुरुपयोग हुआ, टाडा का दुरुपयोग हुआ। पोटो अगर पोटा हो जाता है, कानून बन जाता है तो इसका भी दुरुपयोग होगा। आप इसको रोक नहीं सकते हैं। जो सत्ता में बैठे हुए लोग हैं, उन्हें भी गलतफहमी है। यह कानून उन पर भी लागू हो सकता है। चन्द्रशेखर जी कांग्रेस में ही थे, जब वे मीसा में जेल गये थे। प्रधान मंत्री जी के खिलाफ अभी आप में से कुछ लोग तो साजिश करते ही रहते हैं, लेकिन पोटो लगने के बाद आप लोगों को भी इससे सावधान रहना पड़ेगा।

उपसभाध्यक्ष महोदय, मैं एक और कारण से इसका विरोध कर रहा हूं। मेरा यह विरोध राष्ट्रीय हित में है। यह राष्ट्रीय हित में इसलिए है कि यह जो कानून बनाने की कोशिश की जा रही है, इसकी वजह से सारी दुनिया में, आप अभी कह रहे थे कि राज्य सभा की तरफ सारी दुनिया देख रही है, मेरा भी यही मानना है कि सारी दुनिया हिन्दुस्तान के उच्च सदन, राज्य सभा, की तरफ देख रही है।

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : आप मेरी तरफ देखिए। वेंकैया नायडु साहब की तरफ मत देखिए।

प्रो. रामगोपाल यादव : जिधर चेहरे अच्छे होते हैं, उधर देखने लगते हैं। अब आपकी तरफ देखेंगे।

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : अब आप मेरी तरफ देखिए और नायडु साहब की बात कहिए।

प्रो. रामगोपाल यादव : पूरी दुनिया देख रही है कि हिन्दुस्तान का यह अपर हाउस सीधे-सादे, भोले-भाले लोगों को आने वाले खतरों से, आने वाले उत्पीड़न से बचाने के लिए किस सीमा तक जाकर इस विधेयक को कानून बनने से रोकने का काम करती है। सारी दुनिया में हिन्दुस्तान की संसद का, राज्य सभा का माथा ऊंचा हो जायेगा, अगर यहां पर बैठे हुए लोग इस ड्रैकोनियन विधेयक को रद्द करने के लिए वोट करेंगे।

जहां तक इसके मिसयूज का सवाल है, मैं यह कह रहा हूं कि इसके मिसयूज को आप रोक नहीं सकते हैं और इसके मिसयूज को तब तो बिल्कुल ही नहीं रोक सकते हैं जब कि सोचने-समझने का तरीका ही बिल्कुल पार्टिजिन हो।

उपसभाध्यक्ष महोदय, वेंकैया नायडु साहब ने अपने भाषण में डब्ल्यूटीसी का जिक्र किया था। जब डब्ल्यूटीसी पर हमला हुआ तो उसमें छह हजार लोग मारे गये थे और उसकी प्रतिक्रिया में अमेरिका में केवल दो लोग मारे गये थे। उन दो में एक सिख था और एक मुसलमान था और उन दो लोगों की हत्या के ऊपर अमेरिका के राष्ट्रपति ने अफसोस जाहिर किया था और माफी मांगी थी। आप कहते हैं कि गोधरा की प्रतिक्रिया में जो कुछ हुआ वह जस्टिफाई है। **...(व्यवधान)...** जब यहां 58-60 लोग मारे गए तो उसकी प्रतिक्रिया में सात हजार लोग मारे गए। उसको सत्ता में बैठे लोग जस्टिफाई कर रहे हैं। दुर्भाग्य यह है कि **...(व्यवधान)...**

कुछ माननीय सदस्य : शेम....शेम **...(व्यवधान)...**

श्री एम.वेंकैया नायडु : किसी ने नहीं कहा है, आप ही लोग शेम बोलते हैं तो हम क्या करें? **...(व्यवधान)...**

श्री अमर सिंह (उत्तर प्रदेश) : आपको शर्म है तो शर्म कीजिए।

प्रो. रामगोपाल यादव : श्रीमन्, सारा देश इस बात का गवाह है कि जब यहां गुजरात के बारे में चर्चा हुई थी तब भी सत्ता पक्ष की तरफ से जिन साहब ने बहस इनीशिएट की थी, उन्होंने गोधरा के बाद वाली घटनाओं के बारे में एक शब्द तक का ज़िक्र नहीं किया था, आप रिकॉर्ड देख लीजिएगा। ज़िक्र तक नहीं किया गया और आज भी इन्होंने ज़िक्र नहीं किया है। ये गोधरा तक ही सीमित रहे, उसके बाद जो घटनाएं हुईं, उनके बारे में कुछ नहीं कहा। **...(व्यवधान)...**

SHRI M. VENKAIAH NAIDU: Will you yield for a minute? आपने मेरा नाम लिया, आप मेरे परम मित्र हैं। मैंने गुजरात की सारी घटनाओं को कंडेम किया है, अभी भी कंडेम कर रहा हूं, कल भी कंडेम करूंगा। We said, "It is a shame." मगर मेरी विनती यह होगी कि आपको **...(व्यवधान)...**

श्रीमती शबाना आज़मी (नाम-निर्देशित) : अरेस्ट किसी को भी नहीं किया। **...(व्यवधान)...**

उपसभाध्यक्ष (श्री टी.एन.चतुर्वेदी) : शबाना जी, आप बैठ जाइए।

SHRI M. VENKAIAH NAIDU: I only request you not to gain political mileage out of it. Let us not increase the number. By mistake you have said that 7000 people have been killed in Gujarat. It is not correct. It is around 500.

PROF. RAM GOPAL YADAV : I am sorry, it is 700.

श्री एम.वेंकैया नायडु : इसलिए मैंने कहा। यदि एक भी संख्या बढ़ जाए तो बहुत मुश्किल हो जाती है। *...(Interruptions)...*

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): He has clarified the position; let him finish. Let Prof. Ramgopal Yadav finish now. *...(Interruptions)...* ठीक है, वे पोलिटिकल साइंस के प्रोफेसर हैं, वे इसे ठीक कर लेंगे।

प्रो. रामगोपाल यादव : आफिशियल वर्शन 700 का है लेकिन अभी तक बहुत सारे लोग लापता हैं और मारे भी जा रहे हैं जो कि unofficially बहुत ज्यादा है। हां, यह सच है कि हमारे बाईं तरफ बैठने वाले लोग इतने होशियार हैं कि जब कहीं बड़े पैमाने पर गड़बड़ी होती है तब गड़बड़ी करने वाले लोग बजरंग दल के हो जाते हैं, विश्व हिन्दू परिषद के हो जाते हैं और कभी-कभी आर.एस.एस. के हो जाते हैं। तब वे बी.जे.पी. के नहीं होते हैं लेकिन श्रीमन्, मेरा यह मानना है और मैं अपने सारे मित्रों से यह कहना चाहूंगा कि वे इस बात पर विचार करें कि पहले कुछ भी हुआ हो लेकिन ये जो घटनाएं हो रही हैं, इन घटनाओं की जड़ में भारतीय जनता पार्टी ही है, क्योंकि चाहे बच्छराज व्यास हटे हों जनसंघ से, आर.एस.एस. ने कभी उनको संरक्षण नहीं दिया, बलराज मधोक हटे हो जनसंघ से, आर.एस.एस. ने कभी संरक्षण नहीं दिया, सुब्रमण्यम स्वामी जिस क्षण बी.जे.पी. से हटे, आर.एस.एस. ने उनको संरक्षण नहीं दिया, कल्याण सिंह निकाले गए एक मिनट के लिए भी आर.एस.एस. ने उनको संरक्षण नहीं दिया। तो कौन असली है? कौन मूल है? कौन असली संस्था है? किसके हाथ में असली ताकत है? हिंदुस्तान की जनता को गुमराह करने के लिए भारतीय जनता पार्टी के लोग कभी-कभी जिम्मेदारी डाल देते हैं विश्व हिन्दू परिषद के लोगों पर, जैसे कि उड़ीसा असेम्बली पर हुए हमले के बारे में किया गया। विश्व हिन्दू परिषद की मीटिंग में अगर केन्द्रीय मंत्रिमंडल का सदस्य शामिल होता है तो वह बी.जे.पी. का नहीं होता है। ये किस चिन्ह से जीतकर आए हैं? जो एम.पी. वहां गिरफ्तारियां देते हैं, विश्व हिन्दू परिषद की मीटिंग्ज़ में बैठते हैं, जो मिनिस्टर यहां आते हैं, आप रिकॉर्ड में देखिए, क्या कोई विश्व हिन्दू परिषद का सदस्य है? क्या कोई बजरंग दल का मैम्बर है? वे भारतीय जनता पार्टी के हैं। लेकिन सारे हिंदुस्तान में जब-जब गड़बड़ियां होंगी तो अंततोगत्वा यह कह दिया जाएगा कि बजरंग दल और विश्व हिन्दू परिषद के लोग उसके लिए जिम्मेदार हैं। लेकिन सबके मूल में बी.जे.पी. ही है। इसलिए मान्यवर, मैं यह कह रहा हूं कि कानून तो बुरा है ही, हो सकता है कि हमारे बहुत ही काबिल कानून मिनिस्टर जो हैं, वे कह सकते हैं कि This law is bad, I know; but what are the defects in it? ये कह सकते हैं लेकिन कानून बुरा है और उससे भी बुरी चीज़ यह है कि जब यह विधेयक कानून बन जाएगा तो बहुत ही गलत हाथों में पहुंच जाएगा। यह उससे भी खराब चीज़ है। बन्दर के हाथ में यदि उस्तरा दे दें तो वह दूसरे की गरदन तो काटेगा ही लेकिन अपनी नाक भी काट लेगा, यह ध्यान रखना। मैं कहता हूं कि जब वह अपनी नाक काट लेगा तो वह हिन्दुस्तान की नाक, अन्तर्राष्ट्रीय बिरादरी में काटने का काम भी करेगा। श्रीमन्, सारे सदन से मेरा अनुरोध है कि इस विधेयक के खिलाफ वोट करें और सत्ता पक्ष से भी मेरा अनुरोध है कि इस विधेयक के यहां से गिरने के बाद जबरदस्ती ज्वाइन्ट सेशन बुलाकर, इसको हिन्दुस्तान की जनता पर थोपने का काम न करें बल्कि संसदीय मर्यादाओं और हिन्दुस्तान की जनता की भावना का ख्याल करें। 1977 में इन्होंने जो गलती की, इन्होंने उससे सीखने का काम किया या नहीं किया, यह मैं नहीं जानता, लेकिन जब जब ऐसा कानून लोग लाए हैं, जनता ने उनको दंडित किया है। आपको भी जनता बिना दंडित किए, नहीं छोड़ेगी। हो सकता है, इधर बैठने वालों को जेल जाना पड़े और जेल में रहते हुए 77 की तरह लोग चुनाव जीतकर चले आएं। हम जनता के नुकसान की वजह से विरोध कर रहे हैं। हम जानते हैं कि इससे हम लोगों का पॉलिटिकल लाभ नहीं हो रहा है। इसलिए मैं कहता हूं कि इस विधेयक को नामंजूर कीजिए। बीजेपी और अन्य दल के जो लोग बोल रहे थे, उनसे मैं प्रार्थना करूंगा कि अगर आत्मा नाम की कोई चीज है तो इसके खिलाफ वोट दें। इसी के साथ मैं इसका विरोध करता हूं और अपनी बात समाप्त करता हूं।

श्री रमा शंकर कौशिक (उत्तर प्रदेश) : श्रीमन्, यह कार्यक्रम तो कल सीमित होने वाला है।

श्री अधिक शिरोडकर (महाराष्ट्र) : मैं आखिरी बोल रहा हूं, कल बोलूंगा नहीं। ...(व्यवधान)...

श्री दीपांकर मुखर्जी (पश्चिमी बंगाल) : आखिरी में बोल रहे हैं, हम भी हैं। ...(व्यवधान)...

उपसभाध्यक्ष (श्री टी. एन. चतुर्वेदी) : इस फोरम का जिक्र कर रहे हैं।

MESSAGES FROM THE LOK SABHA

(I) The Uttar Pradesh Appropriation Bill, 2002

(II) The Uttar Pradesh Appropriation (Vote on Account) Bill, 2002

SECRETARY-GENERAL: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:-

(I)

In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Uttar Pradesh Appropriation Bill, 2002, as passed by Lok Sabha at its sitting held on the 20th March, 2002.

The Deputy Speaker has, under article 95(1) of the Constitution certified that this Bill is a Money Bill.

(II)

In accordance with the provisions of rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Uttar Pradesh Appropriation (Vote on Account) Bill, 2002, as passed by Lok Sabha at its sitting held on the 20th March, 2002.

The Deputy Speaker has, under article 95(1) of the Constitution certified that this Bill is a Money Bill.